2596.

SUPREME COURT OF THE UNITED STATES.

No. 60.

THE LAFAYETTE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

CAMILLUS KIDDER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF INDIANA.

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GIDEON, Print.

Pleas of the United States circuit court, begun and holden at Indianapolis on the 20th day of November, in the year of our Lord one thousand eight hundred and fifty-five, before the honorable Elisha M. Huntington, judge of said court for the district of Indiana, and 7th judicial circuit.

Be it remembered, that heretofore, to wit, on the 24th day of July, 1855, Camillus Kidder filed his certain declaration in the clerk's office of said court against the Lafayette Insurance Company, which declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Indiana.

CAMILLUS KIDDER
vs.
THE LAFAYETTE INSURANCE COMPANY.

November term of the Circuit Court of said District for 1855.

Camillus Kidder, a citizen and resident of the State of Maryland, complains of the Lafayette Insurance Company, a corporation created by the State of Indiana, and a citizen and resident of said State of Indiana, in a plea that she render to him the sum of five thousand four hundred and thirty-five dollars and eighty-eight and one-third cents, which she owes to and unjustly detains from him.

For that, whereas the said plaintiff heretofore, to wit, on the 15th day of April, 1853, at a session of the superior court of Baltimore city, in the fifth judicial circuit of the State of Maryland, then being held before the judge thereof in the city of Baltimore, in the State of Maryland, (to wit, at the district of Indiana aforesaid,) by the consideration and judgment of said court, recovered against the defendant in a certain action pending in said court a judgment for the sum of five thousand dollars, his debt, as also the sum of four hundred and twenty-five dollars for his damages, and the sum of ten dollars and eighty-eight and one-third cents costs adjudged by said court, as appears by the record and proceedings in said cause remaining in said court, which record and proceedings read as follows, to wit:

STATE OF MARYLAND,
City of Baltimore, sct:

At a session of the superior court of Baltimore city, in the fifth judicial circuit of the State of Maryland, began and held at the courthouse in and for the city aforesaid on the second Monday in January, being the tenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-three,

Were present: The Honorable William Frick, judge; John Hayes, sheriff; Edward Dowling, clerk.

Among other were the following proceedings, to wit:

CAMILLUS KIDDER
vs.
THE LAFAYETTE INSURANCE COMPANY.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-two, the said Camillus Kidder, by Charles F. Mayer, esquire, his attorney, prosecuted and sued forth, out of the superior court of Baltimore city here, the writ of summons of the State of Maryland in form following, to wit:

[SEAL.] THE STATE OF MARYLAND,

To the sheriff of Baltimore city, greeting:

We command you that you summon the Lafayette Insurance Company, (a corporation created by the State of Indiana, and a foreign corporation, and at the time of the making of the policy of insurance hereinafter mentioned, and of the accruing of this action, holding and exercising franchises within the State of Maryland, and yet so holding and exercising franchises,) that it be and appear before the judge of the superior court of Baltimore city, at the court-house in the same city, on the first day in May next, to answer unto Camillus Kidder of said city, merchant, in a plea that the said corporation render unto the said Camillus the sum of five thousand dollars, which the said corporation owes to said Camillus Kidder and unjustly detains from him, etc.; hereof fail not at your peril, and have you then and there this writ.

Witness the Honorable William Frick, judge of our said court, the twelfth day of January, in the year of our Lord eighteen hundred and fifty-two.

Issued 24th of April, 1852.

(C. F. M.) EDWARD DOWLING, *Clerk.*

And the said Camillus Kidder, by his attorney aforesaid, on the day of prosecuting and suing forth of the aforegoing writ, declared against the said Lafayette Insurance Company in the plea aforesaid, with a notice to his declaration annexed, in form following, to wit:

STATE OF MARYLAND,
City of Baltimore.

The Lafayette Insurance Company, a corporation created by the State of Indiana, and a foreign corporation, and at the time of the making of the policy of insurance hereinafter mentioned, and of the accruing of this action, holding and exercising franchises within the State of Maryland, and yet so holding and exercising franchises, was summoned to answer unto Camillus Kidder of said city, merchant, of a plea that said corporation render unto said Camillus the sum of

five thousand dollars, which the said corporation owes to said Camillus Kidder, and unjustly detains from him. And thereupon said Kidder, the plaintiff, complains, by his attorney, Charles F. Mayer, for that whereas, on the twenty-sixth day of June, in the year eighteen hundred and fifty-one, at the city of Baltimore, in the State of Maryland, the said corporation, the Lafayette Insurance Company, through and under the counter signature of said corporation's agent, E. R. Spague, at and for said city, then and there and ever since then being the agent of said corporation, for such matters of said corporation, and for and in transacting the business of insuring of and for said corporation at said city, and so within the said State of Maryland, as the said Camillus avers, made its the said corporation's certain policy of insurance, purporting thereby and containing therein that the said corporation, the Lafayette Insurance Company, did thereby insure A. Faulack on account of whom it might concern, (loss, if any, payable to "C. Kidder, esquire, or order," which C. Kidder, the plaintiff, said Camillus Kidder avers is himself,) from the fifteenth day of June, one thousand eight hundred and fifty-one, at noon, until the fifteenth day of December, one thousand eight hundred and fifty-one, upon the body, tackle, and other furniture of the brig called the Napoleon, whereof then was master one March, to the amount of five thousand dollars of the sum of seven thousand dollars, at which sum of seven thousand dollars, by said policy it was declared and agreed that said brig or vessel, her tackle, and the matters so insured, were valued. And the said plaintiff further avers, that in and by said policy of insurance, and in and concerning the insurance thereby agreed to be made by said corporation, the said corporation agreed and declared, (having, as the plaintiff avers, been paid a premium and consideration for said insurance, to wit, two hundred and twenty-five dollars,) that the adventures and perils which said corporation was contented to bear, and did, in and for said insurance, take upon itself, were (among other perils) of the seas; and the plaintiff avers, that said insurance was made for account and benefit of the plaintiff, and that at the time of the making of said policy, and thenceforth always, and at the time of the happening of the loss hereinafter mentioned, he, the plaintiff, was interested in said vessel to and for her whole value, and to a large amount, to wit, the amount of the whole sum insured as aforesaid of five thousand dollars. And the plaintiff in fact says, that the said vessel, the brig aforesaid, did, to wit, on the fifteenth day of June, in the year eighteen hundred and fifty-one, sail (with said March as master of her, as aforesaid) from Norfolk, in the State of Virginia, upon a voyage on the high seas to Navy Bay; and that while sailing on said voyage, and on the high seas, and before the fifteenth day of December, in the year eighteen hundred and fifty-one, and after said fifteenth day of June, was, by force of the winds and waves, and by perils of the seas, injured and damaged, and thereby was totally lost to the plaintiff, to wit, at Navy Bay, to wit, at the city aforesaid, on the fifteenth day of August, in the year aforesaid; of all which the plaintiff in fact says the said cor-

poration had notice, to wit, at the city aforesaid, to wit, on the first day of September, in the year aforesaid, and then and there had proof of said interest, and proof of said loss, made and delivered to it by the plaintiff, and was, to wit, at the city aforesaid, to wit, on the first day of November, in the said year, requested by the plaintiff to pay him said sum of five thousand dollars insured by the said corporation, and which then and there it ought to have paid to him according to the form and effect of said policy of insurance, and the said undertaking of said corporation, whereby, and by reason of said sum of five thousand dollars remaining wholly unpaid, an action has accrued to the plaintiff, the said Camillus Kidder, to demand and have of said corporation said sum, yet said corporation, although often so requested so to do, has not yet paid said sum, or any part thereof, to the plaintiff, but to do this hitherto wholly refused, and still refuses, to the damage of the plaintiff of three thousand dollars; and therefore he brings this suit, etc.

CHARLES F. MAYER,
Att'y for Plaintiff.

To the defendant: You are hereby notified that on appearance by you to this action a rule will be laid requiring you to plead to this declaration within fifteen days after entry of said appearance.

CHARLES F. MAYER, *Pltff's Att'y.*

At which mentioned first day of May, to wit, in the year of our Lord one thousand eight hundred and fifty-two, being the return day of the aforegoing writ, comes into court here the said plaintiff, by his attorney aforesaid; and the sheriff of the city aforesaid, to whom the said writ was in form aforesaid directed, makes return thereof to court here, thus endorsed, to wit: "Summoned copy left with E. R. Sprague, as agent. John Hayes, sheriff."

And the said defendant, although solemnly called, come not. And thereupon the said plaintiff, by his attorney aforesaid, files in court here the following affidavit of service of process, to wit:

STATE OF INDIANA,
Tippecanoe County, to wit:

I, John Kilgore, sole judge of the probate court of Tippecanoe county, in the State of Indiana, do hereby certify, that on this third day of May, in the year eighteen hundred and fifty-two, before me, appears Edward J. Jenks, and makes oath on the Holy Evangely of Almighty God that on the third day of May, in the year eighteen hundred and fifty-two, at Lafayette, in Tippecanoe county, in the State of Indiana, he delivered to Godlove S. Orth, the president of the corporation called the Lafayette Insurance Company, a copy of writ, or a writing of which the paper annexed hereto in the margin hereof is an exact duplicate, the writ aforesaid delivered as above stated having thereon a seal, as has the said paper, and the signature of "Edward Dowling, clerk," as has said paper.

In witness whereto I hereto set my hand, at the date first above written; and said Edward J. Jenks, who as aforesaid made oath before me, has signed these presents before me.

JNO. KILGORE, *P. J.*
EDWARD J. JENKS.

STATE OF INDIANA,
Tippecanoe county, sct:

I, Mark Jones, clerk of the probate court in and for said county and State, do hereby certify, that the Honorable John Kilgore, who has signed the above written certificate of the person therein mentioned, having made oath before him as therein stated, was at the time of his administering said oath, and the making of said affidavit, judge of the probate court of Tippecanoe, in said State of Indiana, as he has in said certificate styled himself.

As witness my hand and the seal of said court, this third day of May, in the year eighteen hundred and fifty-two.

[SEAL.]

MARK JONES, *Clerk.*

[SEAL.] THE STATE OF MARYLAND,

To the sheriff of Baltimore city, greeting:

We command you that you summon the Lafayette Insurance Company, (a corporation created by the State of Indiana, and a foreign corporation, and at the time of the making of the policy of insurance hereinafter mentioned, and of the accruing of this action, holding and exercising franchises within the State of Maryland, and yet so holding and exercising franchises,) that it be and appear before the judge of the superior court of Baltimore city, at the court-house in the same city, on the first day in May next, to answer unto Camillus Kidder of said city, merchant, in a plea that the said corporation render unto the said Camillus the sum of five thousand dollars, which the said corporation owes to the said Camillus Kidder, and unjustly detains from him, etc.; hereof fail not at your peril, and have you then and there this writ.

Witness the Honorable William Frick, judge of our said court, the twelfth day of January, in the year of our Lord eighteen hundred and fifty-two.

Issued the 24th day of April, 1852.

EDW'D DOWLING, *Clerk.*

STATE OF MARYLAND,
City of Baltimore, sct:

I hereby certify, that the within is a true copy of the writ issued in the cause of Camillus Kidder v. The Lafayette Insurance Company, taken from the record of proceedings of the superior court of Baltimore city.

In testimony whereof I hereto set my hand and affix the seal of said court, this twenty-fourth day of April, A. D. 1852.

[SEAL.]

ED. DOWLING, *Clerk.*

Whereupon, for that the said plaintiff hath not yet complied with the requirement of the act of assembly in such case made and provided, to entitle him to have judgment against the said defendant, day therefore is given the said plaintiff until the second Monday in September next to comply therewith, and then to move for judgment, according to the form of the said act of assembly. At which said second Monday of September, to wit, in the year aforesaid, comes again into court here the said plaintiff, by his attorney aforesaid; whereupon, for that all things remain in the same state as before, further day is given to the said plaintiff until the second Monday in January next; and then, etc. And now here, at this day, the said second Monday in January, to wit, in the year of our Lord one thousand eight hundred and fifty-three, comes again into court here the said plaintiff, by his attorney aforesaid; and thereupon the said plaintiff, by his attorney aforesaid, exhibits to the court here, and files in said cause, the following profert or policy of insurance, to wit:

(*Vessel.*)—*No.* 133.

By the Lafayette Insurance Company, of Lafayette, Indiana: This policy of insurance witnesseth, that the Lafayette Insurance Company do hereby insure A. Faulac, on account of whom it may concern, if any, payable to C. Kidder, esq., or order, lost or not lost, at and from the fifteenth day of June, one thousand eight hundred and fifty-one, at noon, until the fifteenth day of December, one thousand eight hundred and fifty-one, upon the body, tackle, and other furniture of the good brig called the Napoleon, whereof is master for this present voyage March, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel or the master thereof is or shall be named or called. Beginning the adventure upon the said vessel, tackle, apparel, etc., at and from aforesaid, and so shall continue and endure until the said vessel be safely arrived at aforesaid, and until she shall be moored twenty and four hours in good safety. And it shall and may be lawful for the said vessel in her voyage to proceed and sail to, touch, and stay at any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said vessel, tackle, etc., hereby insured, are valued at seven thousand dollars, without any further account to be given by the assured to the assurers or any of them for the same. Touching the adventures and perils which the said Lafayette Insurance Company is contented to bear and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, overpowering thieves, jettisons, letters of mart and countermart, surprisals, taking at sea, arrests, restraints, and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said vessel, or any part thereof. And in case of any loss or misfortune, it shall be lawful and

Sum insured $5,000.

necessary to and for the assured, his factors, servants and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said vessel, or any part thereof, without prejudice to this insurance, to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment, having been paid the consideration for this insurance by the assured, or four and a half per cent. And in case of loss, such loss to be paid in thirty days after proof of loss and proof of interest in the said vessel, (the amount of the note given for the premium being first deducted;) but no partial loss or particular average shall in any case be paid, unless amounting to five per cent.: Provided always, and it is hereby further agreed, that if the said assured shall have made any other insurance upon the premises aforesaid prior in date to this policy, then the said Lafayette Insurance Company shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said Lafayette Insurance Company shall return the premium upon so much of the sum by them assured as they shall be, by such prior assurance, exonerated from. And in case of any insurance upon the premises subsequent in date to this policy, the said Lafayette Insurance Company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or trade in articles contraband of war. And it is further agreed, that in case a total loss shall be claimed, for or on account of any damage or charge to the said vessel, the only basis of ascertaining her value shall be her valuation in this policy; and if not valued herein, then her actual value at the time of the inception of this risk at the port to which she then belonged. And lastly, it is agreed, that if the above vessel, upon a regular survey, should thereby be declared unseaworthy, by reason of her being unsound, or rotten, or incapable of prosecuting her voyage, on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this policy.

Premium,	$225 00
Policy,	1 00
	$226 00

In witness whereof, the president or vice-president of the said Lafayette Insurance Company hath hereunto subscribed his name, and the sum, and caused the same to be attested by their secretary, in the city of Lafayette; but the same shall not be valid until countersigned by E. R. Sprague, agent of this company at Baltimore.

If the voyage aforesaid shall have begun and shall have terminated before the date of this policy, then there shall be no return of premium

on account of such termination of the voyage. In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers. $5,000. Five thousand dollars.

GODLOVE S. ORTH, *President.*

AM. CRANE, *Secretary.*

Countersigned the twenty-sixth day of June, one thousand eight hundred and fifty-one.

E. R. SPRAGUE, *Agent.*

Balt'e, June 30th, 1851.—Received note at six mos. for the within premium from June 15th.

L. V. PREVOST, *Ag't.*

And thereupon the said plaintiff, by his attorney aforesaid, files in said cause the following deposition, made in open court here, to wit:

SUPERIOR COURT OF BALTIMORE CITY.

CAMILLUS KIDDER
vs.
THE LAFAYETTE INS. CO.

In open court, this 15th day of April, 1853, personally appeared E. R. Sprague, who being sworn upon the Holy Evangely of Almighty God, declares, that heretofore, to wit, upon the twenty-sixth day of June, 1851, he was acting agent of the Lafayette Insurance Company, then doing business in the city of Baltimore; that he had ceased to be such agent before the 24th April, 1852; and that no other agent was to his knowledge appointed afterwards in his place; and that said Sprague's agency aforesaid was for exercising within the State of Maryland, and in some other parts, the franchise of the corporation the said defendant in making fire and marine insurances; and that the insurance in this case, and in the declaration set forth, was affected through said Sprague by said corporation as said corporation's agent.

Sworn to in open court by E. R. Sprague.

Test: EDW'D DOWLING, *Clerk.*

Hereupon, because the said plaintiff hath not appeared to the action aforesaid of the said plaintiff, nor said anything in bar or preclusion thereof, but herein doth make default, the said plaintiff, by his attorney aforesaid, prays that the debt and damages in the said action may be assessed and recovered by him according to the form of the statute in such case made and provided. And thereupon, all and singular the premises being seen, and by the court here fully understood, it is considered by the court here that the said plaintiff ought to recover against the said defendant as well his debt aforesaid as his damages, on occasion of the premises aforesaid to be proved to and ascertained by a jury to be sworn and charged to make a true inquiry according to the act of

the assembly in such case made and provided, and because a jury ought so to inquire and assess the debt and damages aforesaid according to the form of the statute in such case made and provided. Thereupon, on motion of the said plaintiff, by his attorney aforesaid, and by order of the court here, twelve of the jury in attendance upon the court here being called, came, to wit: John R. Kelso. George Bedan, Theodore Denny, Franklin Isams, Adam Ross, Charles Klassen, Joseph H. Colson, Charles F. Pochon, Mark Grafton, William Jamison, Samuel Boyd, James R. Jackson, who being empanelled, sworn, or affirmed, and charged to inquire as to the debt aforesaid, and assess the damages sustained by the said plaintiff in the premises, upon their oath or affirmation aforesaid, return to the court here their inquisition of and upon the premises in form following, to wit:

IN THE SUPERIOR COURT OF BALTIMORE CITY.

CAMILLUS KIDDER
vs.
THE LAFAYETTE INSURANCE COMPANY.

This inquisition, made, indented, and taken at bar in the superior court of Baltimore city, in an action of debt depending in said court, between Camillus Kidder, plaintiff, and the Lafayette Insurance Company, defendant, witnesses that we, the jurors, whose names are hereto subscribed, and seals affixed, being duly empanelled, sworn, and charged to inquire of the debt in question in said cause, and of the damages and costs sustained by said plaintiff by reason of the detention of said debt in the declaration of the plaintiff mentioned, having heard and duly considered in said case, do find and assess the said debt to be five thousand dollars, and find and assess said damages to the sum of four hundred and twenty-five dollars, and the sum of one hundred dollars for the costs aforesaid in said action of the plaintiff.

In witness whereof we, the said jurors, have hereto set our hands and seals, this fifteenth day of April, in the year eighteen hundred and fifty-three.

JOHN R. KELSO, [SEAL.]
F. F. ISAMS, [SEAL.]
J. R. JACKSON, [SEAL.]
WM. JAMESON, [SEAL.]
GEO. BEVAN, [SEAL.]
ADAM ROSS, [SEAL.]
CHARLES KLASSEN, [SEAL.]
CHAS. F. POCHAN, [SEAL.]
THEODORE DENNY, [SEAL.]
M. GRAFTON, [SEAL.]
J. H. COLSTON, [SEAL.]
SAMUEL BOYD. [SEAL.]

Therefore it is considered by the court here that the said plaintiff recover against the said defendant as well the said sum of five thousand

dollars, his debt aforesaid, as the said sum of four hundred and twenty-five dollars, his damages aforesaid, by the said inquisition in form aforesaid found, as also the sum of ten dollars and eighty-eight and one-third cents, adjudged by the court here unto the said Camillus Kidder for his costs and charges by him about this suit in this behalf laid out and expended, and the said Lafayette Insurance Company in mercy, etc.

Memorandum: Judgment by default on inquisition at bar was rendered in this cause on the 15th day of April, 1853, for $5,000 debt, and $425 damages and costs.

And afterwards, to wit, on the fourteenth day of May, in the year last aforesaid, the said plaintiff, by his attorney aforesaid, prosecuted and sued forth out of the superior court of Baltimore city, here, of, and upon the foregoing judgment, the writ of the State of Maryland, of fieri facias, directed to the sheriff of Baltimore city aforesaid, as follows, to wit:

[SEAL.] THE STATE OF MARYLAD,

To the Sheriff of Baltimore city, greeting:

Whereas, at a sitting of the superior court of Baltimore city, began and held at the court-house, in the city of Baltimore, on the second Monday of January, in the year of our Lord one thousand eight hundred and fifty-three, a certain Camillus Kidder, by judgment of the same court, recovered against the Lafayette Insurance Company, late of Baltimore city, as well the sum of five thousand dollars, a certain debt, as the sum of three thousand dollars for his damages which he had sustained, as well by reason of the detention of that debt, as the sum of ten dollars and eighty-eight cents, for his costs and charges by him about his suit in that behalf laid out and expended, whereof the Lafayette Insurance Company aforesaid is convict, as it appears of record: Therefore, you are hereby commanded, that of the goods and chattels, land and tenements of the Lafayette Insurance Company aforesaid, being in your bailiwick, you cause to be made the debt, damages, costs, and charges aforesaid, and have you those sums before the superior court, to be held in the court-house, in the city of Baltimore, on the second Monday in September next, to render unto the said Camillus Kidder, the debt, damages, costs, and charges aforesaid; hereof fail not at your peril, and have you then and there this writ.

Witness the Honorable William Frick, judge of our said court, the ninth day of May, in the year of our Lord eighteen hundred and fifty-three.

Issued the 14th day of May, 1853.

EDW. DOWLING, *Clerk*

On the back whereof is thus endorsed, to wit: Fi. fa., debt $5,000; damages, $3,000; costs, $10 88⅓, add. 70; add. costs if land sold, $4 50; do. if personal property taken, 25; debt and damages to be released on payment of $5,000 debt, and $425 dams. and costs. At

wh ch named second Monday in September, to wit, in the year last aforesaid, being the return day of the aforegoing writ, comes into the said court here the said plaintiff, by his attorney aforesaid, and the sheriff of Baltimore city aforesaid, to whom the said writ was in form aforesaid directed, made return thereof to the court here thus endorsed, to wit, "nulla bona."

JOHN HAYES, *Sheriff.*
Test: EDW. DOWLING, *Clerk.*

STATE OF MARYLAND,
City of Baltimore, sct:

I, Edward Dowling, clerk of the superior court of Baltimore city, in the fifth judicial circuit of the State of Maryland, do hereby certify, that the aforegoing is a full and true transcript taken from the record of proceedings of the said court, in the cause therein mentioned.

In testimony whereof, I hereto set my hand and affix the seal of the court aforesaid, this twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-five.
[SEAL.]

EDWARD DOWLING,
Clerk of Superior Court of Baltimore City.

And the plaintiff further avers, that at the time of the issuing the policy of insurance on which said judgment was rendered, and for a long time before, the statute law of the State of Maryland aforesaid provided as follows, to wit:

SECT. 1. Be it enacted by the General Assembly of Maryland, That any insurance company, not chartered by the laws of this State, which shall effect or shall have effected insurance upon any property, real or personal, or upon life, or lives, within this State; and any corporations, not chartered by the laws of this State, which shall transact or shall have transacted business within this State, shall be deemed to hold and exercise franchises within this State.

SECT. 2. And be it enacted, That when any insurance company or other corporation, as aforesaid, shall hold and exercise, or shall have held and exercised franchises as aforesaid, within this State, such insurance company or other corporations shall be liable to suit within this State, in the courts of this State, upon contracts of insurance on property or lives within this State, or any dealings or transactions in this State.

SECT. 3. And be it enacted, That when any suit shall be instituted against such insurance company or other corporations, so chartered as aforesaid, that service of the writ issued in such cause upon the president or any directors of such company, or upon any agent of such company or corporation, shall be deemed sufficient service upon such company or corporation; and if the company or corporation shall fail to appear, at first term after such service as aforesaid, judgment shall, on proof to the satisfaction of the court, of the agency aforesaid, be rendered by default against the said company or corporation, for the amount

of the plaintiff's claim, to be proved and ascertained by a jury upon inquiry by executed at bar, as in cases of ascertainment of damages by jury or judgments by default.

SECT. 4. And be it enacted, That if any such company or corporation shall, after any liability shall occur, or shall have occurred within this State, or shall revoke the authority of any agent, and shall not appoint another agent within this State, and no president or director of said company or corporation can be found within this State upon whom to serve any writ or process, issued, as aforesaid, upon the person last the agent of such company or corporation, shall be deemed sufficient service on such company or corporation, and if no appearance be entered for such company or corporation at the term next succeeding the issue of the writ or process, judgment by default shall be rendered against such company or corporation for the amount of the plaintiff's claim, to be proved to, and ascertained by, a jury as aforesaid: Provided always, That before such judgment shall be rendered in case the authority of any agent shall be revoked, as aforesaid, and the said writ or process shall be served on such agent, that evidence shall be furnished to the court where such suit is pending, by affidavit or affirmation of the party serving the same, made before the mayor of some corporation, or judge of some court of the United States, to be attested by the seal of such corporation, or of the court of which such person may be judge, that a copy of such writ or process so served on such agent has been delivered to the president or two directors of such company or corporation within the State where such company or corporation shall have been incorporated.

And the plaintiff further avers that said judgment remains in full force and effect, not reversed, vacated, or satisfied in whole or part, whereby an action has accrued to the plaintiff to demand, and have of and from the defendant his debt due demanded; yet the defendant has not paid the same or any part thereof, to the damage of the plaintiff of two thousand dollars; hence he sues.

GREGORY, JONES & SPENCER,
For Plaintiff.

And thereupon, to wit, on the 24th day of July, 1855, a summons in due form of law in favor of the said Camillus Kidder against the said Lafayette Insurance Company was duly issued by the clerk of said court, and delivered to the marshal of said district of Indiana, and by said marshal returned into the office of the clerk of said court. Served on defendants August 1st, 1855.

And afterwards, to wit, at a circuit court begun, continued and holden at Indianapolis, in said district, on the 20th day of November, in the year of our Lord one thousand eight hundred and fifty-five, that being the 2d judicial day of the November term of said court, before the Hon. Elisha M. Huntington, judge of said district of Indiana, comes now the plaintiff, by his attorney, and on his motion the defendant is ruled to plead on the calling of this cause on Thursday morning

next, and day is given; and afterwards, to wit, on the 5th day of December, in the year 1855, that being the 14th judicial day of the November term aforesaid, before the same judge as aforesaid, come the parties by their counsel, and the defendant files the following plea, to wit:

The said defendant saith the declaration of said plaintiff is not sufficient in law to enable said plaintiff to have and maintain his said action, and this defendant assigns the following special causes of demurrer thereto:

1st. It is not averred in, nor doth it appear from said declaration, that said defendant was served with process in said action commenced in said superior court of Baltimore as required by the law of the land, nor that this defendant appeared to said action; wherefore said pretended judgment is not sufficient to support this action.

2d. It doth not appear, nor is it averred in said declaration, that this defendant caused her appearance to be entered in any manner howsoever to said action in said superior court of Baltimore city, nor that process was served on this defendant otherwise than by service of process on its president, which service was made without the State of Maryland, to wit, in the State of Indiana. Nor doth it appear from the declaration, that process was served on any officer of defendant within the State of Maryland upon whom by law service would be or is operative to authorize a judgment in personam.

3d. Said pretended judgment of said superior court of Baltimore city is a nullity.

4th. Said action in debt cannot be maintained; the action, if sustainable at all, should have been in assumpsit.

EDWARD H. BRACKETT,
Attorney for Defendant.

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis, in said district, on the 10th day of December, in the year 1855, that being the 18th judicial day of said term, before the same judge as aforesaid, come now the parties, by their attorneys aforesaid, and the said plaintiff files his joinder in demurrer, in the words and figures following, to wit:

And the said plaintiff joins in demurrer and says, that said declaration is sufficient in law, for the plaintiff to have and maintain his aforesaid action against said defendant.

GREGORY, JONES & SPENCER,
Attorneys for said Plaintiff.

And thereupon, said issue in law is submitted to the court, and after argument and due deliberation had, the court overrule said demurrer, and adjudge said declaration sufficient in law; it is therefore considered by the court now here, that said plaintiff ought to have and recover of and from said defendant his said debt and damages as aforesaid; and

on motion and by consent of parties, the assessment of said debt and damages is submitted to the court without the intervention of a jury; and after hearing the evidence, the court find for the plantiff against said defendant the sum of five thousand four hundred and thirty-five dollars and eighty-eight and one-third cents ($5,435 88⅓) in debt, and the further sum of eight hundred and sixty-three dollars and forty-seven cents for his damages.

It is therefore considered by the court now here, that said plaintiff do have and recover of and from said defendant the said sum of five thousand four hundred and thirty-five dollars and eighty-eight and one-third cents in debt, and also the further sum of eight hundred and sixty-three dollars and forty-seven cents in damages so found and assessed by the court as aforesaid, making together the sum of six thousand two hundred and ninety-nine dollars and thirty-five and one-third cents, ($6,299 35⅓,) and also the costs, taxed at dollars and cents, and the defendant, &c.

Thereupon said defendant moved to set aside the finding of the court, and also in arrest of judgment, which motions are overruled by the court, and said defendant files his two several bills of exceptions, in the words and figures following, to wit:

1st. Be it remembered, that said defendant appeared herein, and by Edward H. Brackett, her regular authorized attorney, filed her demurrer herein, as elsewhere appears in the record of this cause to the plaintiff's declaration herein. And said plaintiff joined in demurrer, and the court overruled said demurrer and held said declaration sufficient in law to maintain said action, to which decision of the court overruling said demurrer and holding said declaration sufficient, said defendant then and there and at the proper time and in the proper manner excepted, and prayed that his bill of exceptions may be signed and sealed by the court and made a part of the record of said cause, which is accordingly done.

E. M. HUNTINGTON. [SEAL.]

2d. Be it remembered, that after the court had overruled the demurrer of said defendant in this record, elsewhere appearing, said defendant let judgment on demurrer be entered without further pleading to said action. And the court, on motion, and of the suggestion of plaintiff, proceeded to assess the damages herein, without the intervention of a jury, a jury being waived by defendant, and the plaintiff produced in evidence the following evidence, and none other, viz: 1st. The judgment record of said superior court of Baltimore city set forth in the declaration. 2d. The following duly exemplified copy of an act or law of the State of Maryland, viz:

SECT. 1. Be it enacted by the General Assembly of Maryland, That any insurance company not chartered by the laws of this State, which shall effect, or shall have effected, insurance upon any property, real or personal, or upon life or lives within this State, and any corporation not chartered by the laws of this State, which shall transact, or shall

have transacted business, within this State, shall be deemed to hold and exercise franchises within this State.

SECT. 2. And be it enacted, That where any insurance company or other corporations as aforesaid shall hold and exercise, or shall have held and exercised, franchises as aforesaid, within this State, such insurance company or other corporation shall be liable to suits within this State, in the courts of this State, upon contracts of insurance on property or lives within this State, or any dealings or transactions in this State.

SECT. 3. And be it enacted, That when any suit shall be instituted against such insurance company or other corporations so chartered as aforesaid, that service of the writ issued in such cause upon the president or any directors of such company, or upon any agent of such company or corporation, shall be deemed sufficient service upon such company or corporation; and if the company or corporation shall fail to appear at first term, after such service as aforesaid, judgment shall, on proof to the satisfaction of the court of the agency aforesaid, be rendered by default against the said company or corporation for the amount of the plaintiff's claim, to be proved to and ascertained by a jury upon inquiry, *by* executed at bar as in cases of ascertainment of damages by jury, or judgment by default.

SECT. 4. And be it enacted, That if any such company or corporation shall, after any liability shall occur, or shall have occurred within this State, or shall revoke the authority of any agent, and shall not appoint another agent within this State, and no president or director of said company or corporation can be found within this State, upon whom to serve any writ or process, that service of any writ or process as aforesaid, upon the person last the agent of such company or corporation, shall be deemed sufficient service on such company or corporation; and if no appearance be entered for such company or corporation at the term next succeeding the issue of the writ of process, judgment by default shall be rendered against such company or corporation for the amount of the plaintiff's claim, to be proved to and ascertained by a jury as aforesaid: Provided always, That before such judgment shall be rendered, in case the authority of any agent shall be revoked as aforesaid, and the said writ or process shall be served on such agent, that evidence shall be furnished to the court where such suit is pending by affidavit or affirmation of the party serving the same, made before the mayor of some corporation, or judge of some court of the United States, to be attested by the seal of such corporation, or of the court of which such person may be judge, that a copy of such writ or process so served on such agent has been delivered to the president, or two directors of such company or corporation within the State where such company or corporation shall have been incorporated.

Which was all of the evidence offered by the plaintiff, and to giving of each and both of which in evidence, viz., the judgment, record, and act of Maryland, the defendant objected, which objections were each and both overruled by the court, although the same were objected to

at the proper time, and in the proper manner, and which second ruling of the court the defendant, by her counsel, then and there, and at the proper time, and in the proper manner, excepted. Upon which evidence alone said court rendered verdict for said plaintiff against said defendant for the sum of $5,435 88⅓ debt, and $863 47 damages, besides costs, to which decision of the court, so rendering verdict in favor of said plaintiff against said defendant, the defendant then and there, and at the proper time, and in the proper manner, by her counsel, excepted. And said defendant, by her counsel, then and there, and at the proper time, and in the proper manner, moved said court to set aside said verdict, on the ground that said verdict was contrary to evidence, also that the same was contrary to law and evidence, also that verdict should have been rendered for the defendant, and not for the plaintiff, which motion to set aside said verdict said court then and there overruled, to which decision of the court so overruling said motion the defendant then and there by her counsel excepted; and said court then and there rendered judgment in favor of the said plaintiff against said defendant for said sum of $5,435 88⅓ in debt, and $863 47 in damages, besides costs, as elsewhere appears in the record of this cause, to which decision of the court so rendering judgment the defendant then and there by her counsel excepted; and said defendant then and there, and at the proper time, and in the proper manner, moved the court to arrest and set aside said judgment for defects apparent on the record and proceedings herein, which motion the court overruled, and to which decision of the court said defendant, by her counsel, at the proper time, and in the proper manner, excepted and prayed an appeal to the Supreme Court of the United States, which is granted.

And said defendant also prays that this her bill of exceptions may be signed and sealed by the court, and made a part of the record of this cause, which is accordingly done.

E. M. HUNTINGTON. [SEAL.]

And also an agreement of parties in the words and figures following, to wit:

It is hereby mutually agreed by and between the plaintiff and defendant in said cause, now pending in the circuit court of the United States for the district of Indiana, that the sole and only cause of action herein is considered and regarded by the parties as an action of debt, founded solely on the record of the court therein set forth; and that the sole and only question for the determination of this court, or that of the Supreme Court of the United States, is and shall be whether or not said judgment record is valid against the defendant, process therein having only been served on E. R. Sprague, the former agent of the defendant, who issued the policy of insurance, and on Godlove S. Orth, the president of defendant; which service on said Sprague was made in the State of Maryland, and which service on said Orth, the president of the defendant, was made in the State of Indiana, in the manner and under the circumstances particularly set forth in the

said record of said judgment and proceedings, and not elsewhere; and that no appearance was ever entered to said action in said Maryland court by or on behalf of the defendant. This agreement to constitute part of the record of this cause in this court, and that of the Supreme Court of the United States.

EDWARD H. BRACKETT,
Attorney for Defendant.
GREGORY, JONES & SPENCER,
Attorneys for said Plaintiff.

The said defendant prays an appeal to the Supreme Court of the United States, and files the following bond, to wit:

Know all men by these presents: That the Lafayette Insurance Company and Edward H. Brackett are held and firmly bound unto Camillus Kidder in the sum of five hundred dollars, to be paid to said Camillus Kidder, his executors, or administrators, to which payment, well and truly to be made, we bind ourselves, each and every of us, jointly and severally, and our successors, and heirs, and executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 10th day of December, 1855.

Whereas, the above named Lafayette Insurance Company has prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered by said circuit court at the November term thereof, 1855, in favor of said plaintiff, the obligee herein, against said Insurance Company: Now, therefore, the condition of this obligation is such, that if the above named Lafayette Insurance Company shall prosecute said writ of error to effect, and answer all costs if she shall fail to make good her plea, then this obligation to be void, otherwise of force.

[SEAL.] The LAFAYETTE INSURANCE COMPANY,
By Edw'd H. Brackett, her Attorney.
EDWARD H. BRACKETT. [SEAL.]

Approved as sufficient in open court, this 10th December, 1855.
E. M. HUNTINGTON, *Judge.*

Which bond is approved by the court, and said appeal granted, but not to operate as a supersedeas; and the defendant files the following writ of error, citation and agreement, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Circuit Court of the United States for the district of Indiana, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court before you, between Camillus Kidder and the Lafayette Insurance Company, a mani-

fest error hath happened, to the great damage of the said Lafayette Insurance Company, as by her complaint appears, and we being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 10th day of December, 1855.

HORACE BASSETT,
Clerk C. C. Ind. Dis.

UNITED STATES OF AMERICA, *ss:*

To Camillus Kidder, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December, 1856, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein the Lafayette Insurance Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elisha M. Huntington, judge of the district court of the United States for the district of Indiana.

E. M. HUNTINGTON.

UNITED STATES, *ss: District of Indiana.*

Circuit Court of the United States, for November Term, 1855.

CAMILLUS KIDDER
vs.
THE LAFAYETTE INSURANCE COMPANY.

Writ of error having this day been brought by said defendant to the Supreme Court of the United States, for the reversal of the judgment herein rendered by said circuit court, it is therefore hereby agreed by the plaintiff and defendant, that both parties shall appear at the present term of said Supreme Court, to said action in error; that plaintiff shall file the record in said court, and the defendant shall appear thereto, waiving all errors or want of technicality in prosecuting or perfecting said writ of error, and that the merits only in said cause, as set

forth by said record, shall be considered by said Supreme Court of the United States.

December 10, 1855.

EDW'D H. BRACKETT,
Attorney for the Lafayette Insurance Company.
GREGORY, JONES & SPENCER,
Atty's for Camillus Kidder,
Dft. in Error in the Supreme Court U. S.

DISTRICT OF INDIANA, *to wit:*

I, Horace Bassett, clerk of the circuit court of the United States for the 7th circuit and district of Indiana, do hereby certify the foregoing to be a true and complete transcript from the records now in my office, in the case of Camillus Kidder against the Lafayette Insurance Company.

In testimony whereof I hereunto set my hand and affix the
[L. S.] seal of said circuit court, at Indianapolis, this 12th day of December, A. D. 1855.

H. BASSETT,
Clerk C. C. Ind. Dis.

Filed 5th Dec., 1856.